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CANADIAN LEGISLATION CONCERNING INDUSTRIAL DISPUTES

WITH SPECIAL REFERENCE TO THE DISPUTES INVESTIGATION ACT

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Two statutes present themselves for consideration: (1) the *Conciliation and Labour Act*; and (2) the *Industrial Disputes Investigation Act, 1907*. The *Conciliation and Labour Act* contains the earliest Dominion legislation concerning industrial disputes. This statute, in its present form, is a consolidation dating from 1906 of two earlier laws, the *Conciliation Act* and the *Railway Disputes Act*.

The *Conciliation Act* was passed in 1900. It provided for the appointment of a Minister and Department of Labour with certain prescribed functions, and for the institution under the supervision of the minister of a system of conciliation boards for the adjustment of industrial disputes. The statute, in so far as it related to conciliation boards and industrial disputes, proceeded generally on the lines of an English act. It will be interesting to glance at the conditions in Great Britain producing the law which the Canadian act follows.

Conciliation committees or boards have, for more than half a century, existed in mining and manufacturing districts of Great Britain, springing up quite naturally and unofficially for the adjustment of the disputes necessarily growing out of an intense industrialism. Selected persons represented the varied interests of a particular industry in a given district,—of textile working or coal mining, for instance, in Lancashire or Yorkshire. The boards assumed in time and in some cases a certain permanence of character, while the chairmanship acquired almost a semi-judicial aspect. When difficulty occurred in filling a chairmanship by agreement the disputing parties fell into the habit of requesting an appointment by the government. The duty of making such appointments was vested in the Board of Trade, and gradually there was created a situation whereby the Board of Trade found itself in touch with

a group of expert adjusters whose success in the work entrusted to them depended on their skill, tact and known integrity rather than on any legal or formal authority. The element of legal compulsion was not a factor in the settlement of industrial disputes which came before these conciliation boards.

The machinery of the boards was developed and improved as the years passed. The English Conciliation Act of 1896 confirmed and encouraged the system which had grown up. The work of the conciliation boards aided in the settlement of many trade disputes, and strikes or lockouts were prevented in these cases, but industrial unrest kept pace, perhaps more than kept pace, with industrial development. Some trades did not avail themselves of the methods of conciliation boards and there was in such cases little to hinder the rapid aggravation of small disputes into strikes or lockouts. In some cases also where the boards existed their best efforts were futile and the disputants resorted to the methods of the industrial battlefield. Disastrous and even terrible industrial conflicts recurred from time to time. The necessity of conciliation machinery increased as the question of industrial relations pressed more and more to the front.

Calls on the British Board of Trade for expert adjusters, assessors, etc., in industrial disputes which the disputants could not settle directly, became more frequent, and in 1908 the machinery relating to conciliation boards was further developed for the constitution of a Court of Arbitration. For the purpose of this Court three panels were formed: a chairman's panel, an employers' panel, and a labour panel. By virtue of this new agency, on the application of the parties to an industrial dispute, a Court of Arbitration consisting of three or five members is nominated by the Board of Trade from these panels, the powers of the Court corresponding generally with those which a Conciliation Board had possessed.

Yet a further expansion in Great Britain of the conciliation system was the establishment in 1911 of what was termed an Industrial Council, composed of representatives of employers and employes, with a Chief Industrial Commissioner; the Industrial Council was established "for the purpose of considering and of enquiring into matters referred to them affecting trade disputes," etc. Sir George Askwith, K.C., who became chairman of the council, had been long a leading figure in the group of expert adjusters from

which the Board of Trade had been, on the request of the disputing parties, selecting chairmen of conciliation boards.

It is of interest to note in passing that Sir George Askwith visited Canada in 1912 for the purpose of investigating the nature and operations of the *Industrial Disputes Investigation Act, 1907*, the Dominion statute which was now effective in these matters and the enactment of which by Great Britain was being urged in some quarters as a possible remedy for the disastrous industrial conflicts which then were distracting that country. Apart, however, from certain special legislation limited to the coal mining industry, and consequent on the national coal mining strike of 1912, no further legislation as to industrial disputes was enacted in Great Britain until the outbreak of the war, when a measure was passed not far removed in its general intent from that of the Dominion statute on which Sir George Askwith reported.

Before leaving this aspect of the subject, it may be added that at the close of 1914, 300 conciliation boards or courts were in existence in Great Britain; the same figure had obtained at the end of 1913. British official reports show that, despite the efforts and influence of these numerous conciliation agencies, there were 1,497 strikes or lockouts in Great Britain during 1913, with time losses of nearly twelve million working days; for the corresponding year in Canada the number of strikes was 113, with time losses of 1,287,-678 days.

Let us return now to the Conciliation Act enacted by Canada in 1900. The statute was obviously designed to promote in Canada the establishment of conciliation boards on the lines of those found in Great Britain. The measure was destined to remain inoperative in so far as it concerned conciliation boards; no tribunals of this nature were established under its provisions. The act was not, however, fruitless in its bearing on industrial disputes. Officials of the newly established Department of Labour were required to follow closely the course of industrial disputes, not only for statistical purposes, but from the point of view of public welfare. Offers of mediation were made in serious disputes. The offers were frequently declined and intervention was possible only by consent of both disputants. Where mediation was accepted the department seems to have acquitted itself creditably and the Deputy Minister of Labour of that time (Mr. W. L. Mackenzie King) established some

reputation in the adjustment of industrial disputes. Dominion officials had not previously made efforts in this direction. The work thus accomplished was of some value, but the facilities of the department were not large and no headway was, as we have seen, made in the development of the conciliation board system whereby local effort and influence might be sometimes effectively utilized for the solution of a particular difficulty.

In 1903 was enacted the *Railway Disputes Act*, a measure applying, as its name suggests, to disputes in industries affecting the railway service. The new statute invested the Minister with a limited power of compulsion with respect to the establishment of conciliation boards. Where a dispute existed between a railway company and its employes, and either party to the dispute (or a municipality concerned therein) asked that the dispute might be referred to a board for adjustment, the act permitted the establishment of a board without requiring the consent of the other disputant. If, however, the establishment of a board was not requested, no board could be established, and in any event the statute placed no restraint on the right to strike or lockout. This measure remained, on the whole, inactive, only one dispute being referred for adjustment under its provisions down to 1907, when it was practically displaced by new legislation. It is not impossible that the existence of the statute may have exerted sometimes on the parties to a dispute a silent pressure towards an amicable arrangement by direct negotiation, but on this point there is no record.

In 1906 the two measures mentioned were consolidated for the revised statutes of Canada and became known as the *Conciliation and Labour Act*.

The year 1907 saw the enactment of the *Industrial Disputes Investigation Act*, the scope of which is aptly indicated by its complete title, "An Act to aid in the prevention and settlement of strikes and lockouts in mines and industries connected with public utilities." The new statute contains the first limitation placed by the Dominion Parliament on the right to engage in strikes or lockouts, the limitation being confined to stated classes of labour. The process of dealing with a dispute entails its reference for attempted adjustment to a Board of Conciliation and Investigation formed on the lines of the ordinary board of arbitration, with a nominee from each of the disputants and a third member, the chairman, selected

if possible by joint agreement; failing a joint agreement as to the chairmanship, the chairman is named by the Minister of Labour. A strike or lockout in the industries indicated is unlawful, under penalty, until the dispute in question has gone before the board. The provisions of the Act have been recently extended to what may be broadly designated as war industries in all their branches, so that a lockout or strike in such industries prior to procedure under the statute becomes unlawful.

It will be useful, before discussing the Dominion Act further, to look broadly at the conditions elsewhere as to legislation on this subject. The situation in the United Kingdom has been already outlined. In the United States, as in the case of Great Britain, the new Canadian law was made the subject of official inquiry. Dr. V. S. Clark, a skilled investigator, visited Canada in 1908 and again in 1909, with a view to ascertaining the adaptability of the statute to the requirements and conditions of the United States. Dr. Clark's reports are valuable treatises on the statute and its aims and achievements, as at the time of enquiry. Similar enquiries into the Canadian Act have been made by various states of the union. The United States proceeded, however, on other lines, its efforts culminating in what is known as the *Newlands Act* of 1914, which created a Board of Mediation and Conciliation, designed, like the British Industrial Council, for the purpose of promoting industrial peace and not unlike the British Industrial Council in its general method of operation; the jurisdiction of the United States Board of Mediation is, however, severely limited, extending only to disputes involving employes of interstate railways. Like the British statute, the measure is permissive, not compulsory. The legislation of the states of the union, when it touches the subject of industrial disputes, has not gone beyond efforts at conciliation and the provision in some cases of carefully devised machinery for that purpose.

A concise statement as to the situation in continental Europe in these matters appears in a special report on legislation respecting industrial disputes issued a year or two ago by the Labour Department of the British Board of Trade:

Amongst the foreign countries covered by this return, says the report, it will be observed that in Europe there are nine, the statute books of which comprise legislation specially designed to avert strikes on the part of those employed in public utility services. While varying widely in range and stringency, these laws possess one characteristic in common: the workpeople to whom they relate are in

every case placed on a footing different from that of the general body of industrial workers in respect to the right to engage in strikes, this right being either explicitly withheld or else subjected to specific limitations in its exercise.

Of the nine countries referred to, five have enacted laws absolutely prohibiting workpeople employed in certain public utility services from engaging in strikes. These countries are Russia, Roumania, Holland, Belgium and Italy. In Russia and Roumania, the law covers the whole field of what may be termed public utility services, whether governmental or local. In Belgium, it applies to all persons in the service of the state, including the railways, post office, telegraphs and telephones; in Italy, it applies to all persons in the service either of the state or of a railway company, while in Holland, only those employed on main lines of the railway service are included. Three countries, viz., Spain, Portugal and the Ottoman Empire, have enacted laws applicable to all public utility services, and declaring concerted stoppages of work illegal, unless certain conditions have previously been fulfilled. In Spain, the conditions are that notice of the strike or lockout shall have been given to the authorities, either eight days or five days beforehand, according to the nature of the undertaking, and that such notice be accompanied by a statement of the cause of the strike or lockout. The Portuguese law insists on twelve or eight days' notice being given of the strike or lockout, according to the nature of the undertaking, and requires that such notice be accompanied by a statement of the causes or objects of the strike or lockout. Under the same law, all "officials, public servants, or those receiving salaries from the state" incur the penalty of dismissal, if they combine to suspend work.

The last of the nine European countries that call for mention in this connection is France, where the only persons employed in public services who incur legal penalties for participating in strikes are the engine-drivers, guards and brakemen actually in charge of trains, and the outdoor staff of the postal service.

While attempt to avert strikes and lockouts in public utility services by means of special laws withholding or limiting the exercise of the right to strike are confined to the nine countries just enumerated, there are two countries—Germany and Austria—where, so far as the railway, postal and allied services are concerned, the exercise of such a right on the part of the staff is rendered impossible in practice by the policy pursued by the authorities towards any manifestations of trade union activity among members of these services—a policy based on the assumption that membership of a militant trade union is incompatible with loyalty to the department and with the safety of the state.

The British report contains a further paragraph showing that permanent courts of arbitration "equally representative of the interests of employers and of workpeople," especially for the promotion of industrial peace, exist in Denmark and in the Swiss Canton of Geneva.

There remain the British Dominions. Apart from the Dominion laws now under consideration there is little to be said of Canada. In Ontario and Quebec there are laws providing machinery for conciliation purposes: the machinery is but little used.

A more interesting statute is that of Nova Scotia, dating from 1890 (amended 1900), which, applying to the coal mining industry only, forbids a strike or lockout where one of the disputants calls for a reference of the dispute to arbitration in the manner provided; where there is no request for arbitration there is no restraint on strike or lockout.

South Africa needs but a word. In 1909 the Transvaal enacted a law adapted from the Canadian statute of 1907, and this measure is understood to have remained effective under the South African Union.

In Australia and New Zealand the situation is more intricate. For twenty years the various Australasian States have shown extraordinary activity in legislation concerning industrial disputes. The writer of an Australian letter contributed so long ago as April 14, 1909, to the *Otago Witness*, one of the leading journals of New Zealand, remarks: "The Commonwealth and States will in a few years be overlain with a web of industrial legislation and judicial decisions which will tax the brain of the future European should he endeavour to unravel it." The period subsequent to the date of this comment has not been less fruitful than earlier years in industrial legislation in Australia, and with this warning before us it will be perhaps wise to abstain from too close an inquiry into the subject. The independent and original character of much of this legislation is perhaps reflected in the view which finds expression in a report issued in July last by the Government of Victoria on "Anti-Strike Legislation":

The laws in parts of the world outside Australia, excepting perhaps Canada and South Africa, are of little use as a guide, from the fact that conditions from military and other points of view are so different. It is interesting to note that no two laws in Australia, nor, indeed (so far as I can find), in the world, have quite the same provisions against strikes and lockouts. This may be accounted for in part by the different conditions, but it also suggests that anti-strike law has not yet evolved; that it is in its elementary stage; and that each country, as it set about choosing its method, turned down every system already in existence and proceeded to set up a new one of its own.

At another point in his report the writer credits the Canadian Act of 1907 with having inspired not only the Transvaal Act of 1909, as mentioned above, but also the Queensland Act of 1912 and the New Zealand Act of 1913, which, in what are perhaps their chief features, approximate to the Dominion measure.

Of the abundant industrial legislation of Australasia it may be said generally that while numerous statutes were enacted having as their chief aim the elimination of strikes and lockouts, and in many cases (as in New South Wales) expressly prohibiting them, under severe penalties, the strike has by no means disappeared. The Statistician of the Commonwealth of Australia places the number of strikes and lockouts for Australia for 1914 at 334, involving time losses of 942,000 working days, as against 44 disputes only, in the same year, for Canada, with its much larger population, the Canadian disputes entailing time losses of 430,000 days. The comparison is yet more favourable to Canada if it is confined to the State of New South Wales, where alone, in 1914, the strikes numbered 235, with time losses of 727,726 days.

Just why the dominions and states of the South Seas should have shown so much greater activity in this field of legislation than has been manifested by the Dominion and provinces of Canada must remain a matter of interesting conjecture, but if the number of strikes and lockouts is a criterion of industrial unrest, then the figures quoted do not suggest that the comparative inactivity of Canada has brought a severe penalty.

The Canadian statute of 1907 is then in agreement with the laws of several countries in two important respects: (1) in being applicable to industries connected with public utilities; (2) in declaring that strikes and lockouts may not occur legally in these industries until after efforts at adjustment through official machinery have been made. In some countries, however, the prohibition goes beyond that of the Dominion law and is unconditional. The Dominion statute is exceptional in being applicable to the mining industry.

It was in 1906 that a prolonged strike in the Galt coal mines of Lethbridge, Alberta, brought about a severe shortage of fuel in southern Alberta and southern Saskatchewan. The Prime Minister of Saskatchewan, the province in which perhaps the difficulties were most acute, asked the aid of the Dominion government and the then Deputy Minister of Labour, Mr. W. L. Mackenzie King, was despatched to the scene of the dispute, this action being taken under the authority of the *Conciliation and Labour Act*. The efforts of the Deputy Minister and the increasing evidence of the hardships threatening the public combined to bring about a

settlement and the threatened fuel famine was prevented. Official reports of the period show that the incident caused special consideration to be given to the subject of industrial disputes legislation with a view particularly to the prevention of strikes or lockouts of such a nature as to jeopardize the public safety. The classes of industry known generally as "public utilities" are, clearly, those with which the public interests are most intimately identified. The term "public utilities" is somewhat loose and its interpretation varies in different countries. In New Zealand, for instance, bakers and slaughtermen (butchers) fall within the category, and from the point of view of the prairie provinces in 1907 there was much to be said for regarding the coal mining industry as a public utility. The interpretation clause of the Canadian act is of some assistance. The clause declares that "employer" means "any person, company or corporation employing ten or more persons and owning or operating any mining property, agency of transportation or communication, or public service utility, including, except as hereinafter provided, railways, whether operated by steam, electricity or other motive power, steamships, telegraph and telephone lines, gas, electric light, water and power works." It was of course inevitable that coal mines also were brought in. The statute prohibits under penalty a strike or lockout in any of the industries indicated until after the dispute which is in question shall have been before the Board of Conciliation and Investigation, and it provides for the establishment of a Board of Conciliation and Investigation on the application of either party to a dispute. The composition of a board was explained above.

The act gives the board the requisite powers for taking evidence, etc. Proceedings are public or private as may seem expedient to the board. The department pays fees and traveling expenses of board members, witnesses, etc., and for necessary clerical work. If the board by conciliatory effort brings the disputants together and a working agreement results, the dispute manifestly is ended. If this is impossible the board is required to make findings and recommendations showing how in its view a settlement should be made. Provision is made for a minority report. All reports are made public. The theory of the act is that the board's findings, being based on what is presumed to have been a fair and impartial investigation, will bring an informed public opinion to bear on the

matters which have been in dispute, and that either of the disputants who is unreasonable in his attitude will thus be induced to yield a point and accept the recommendations of the board rather than fly in the face of a public opinion which might be expected to sustain the view of the board; acceptance of the findings, however, no matter how urgent the apparent advantage or necessity, is not legally compulsory. Once the board's findings are made public the disputants, unless of course they have voluntarily bound themselves before the board by agreement, are freed from the restraining effect of the statute and the threatened strike or lockout may proceed. Penalties are named for those taking part in strikes or lockouts contrary to the terms of the act, also for persons who incite, encourage or aid those taking part in such strikes or lockouts. Clause 57 of the act aims also at preventing changes in conditions with respect to wages or hours save by mutual consent or until the proposed changes have been before a board. Procedure under the statute is on simple lines, and in practice the effort has been to free the tribunal so far as possible from the formalism of courts of law. Section 4 provides for a Registrar, and on the passage of the act the Deputy Minister of Labour became by Order-in-Council Registrar of Boards of Conciliation and Investigation. On the constitution of a board the Registrar forwards to the chairman the necessary documents and instructions. Certain provisions of the statute are intended to guard against the establishment of boards for trivial matters, and the practice and experience of the department are naturally of assistance to this end.

The statute became law on March 22, 1907. It has been once amended (1909), but the amendments have affected only some details of procedure. Statements of proceedings under the act show that down to the end of the fiscal year 1914-15 there had been 177 disputes in which applications for boards of conciliation had been received. Boards were established in 158 cases. In the remaining 19 cases adjustments of the disputes were effected, usually through the agency of the department, without the aid of a board, though in some cases not until after the procedure for a board was under way. The total number of employees affected by the 177 disputes is placed at 231,426. The railroading and coal mining industries have figured most largely before boards of conciliation; street railway employees and longshoremen have also called for many enquiries.

In a great majority of the cases thus dealt with the strike or lockout which threatened was averted, either by positive settlement or by expressed or tacit understanding. During the eight years ended March 31, 1915, there were 19 disputes, in which the threatened strike was not averted. In other words, in about 11 per cent of 177 disputes brought under the statute no sort of understanding could be arranged between the disputants, who proceeded accordingly, to the last resort of all disputants, a trial of strength, which, the requirements of the law having been met, was no longer illegal. There are few lockouts in Canadian industrial life, and in the 19 disputes which could not be adjusted the trial of strength involved in each case a strike. Enquiry into the outcome of the 19 strikes in question shows that in the majority of cases settlement was ultimately effected closely, if not wholly, on the lines recommended by the board.

The annual appropriation for the purposes of the statute is about \$25,000, and the amount has generally proved sufficient to meet the expenditures.

A phase of the subject which should not be overlooked is that the machinery of the *Industrial Disputes Investigation Act* is set in motion by one or both of the disputants, or it remains still. A board cannot be established until an application is received from one of the disputing parties, but the non-establishment of a board does not lessen the restraint as to strikes and lockouts.

Reference has been made to the strikes occurring in disputes which had been before boards and had not been adjusted. There has been also, in industries coming under the act, a considerable number of strikes in disputes which have not gone before a board for investigation. Work ceased in these cases without regard to the act. Many of the serious coal mining strikes in Western Canada during recent years have occurred in this way.

What, it may be asked, becomes of the penalties prescribed for these apparent infringements of the statute? The reply must be that such cases have seldom gone to the courts. It has not been the policy of the successive Ministers under whose authority the statute has been administered to undertake the enforcement of these provisions. The parties concerned, or the local authorities, have laid information occasionally, and there have been in all eight or ten judicial decisions. The mining industry has been the chief delin-

quent in the matter of infringements, and there have been occasional derelictions on the part of the lower grades of transport or shipping labour; in the higher grades of railway labour the act has been well observed.

The usefulness of the act is perhaps better determined, in any event, less by the negative results in situations where the parties have, regardless of consequences, stayed deliberately aloof from its influences and operation than by the positive results obtained in situations where the parties concerned have, whether cordially or reluctantly, brought their differences within the scope of the act. The figures printed above show the very large proportion, 89 per cent, of cases where, in disputes thus dealt with, the threatened strike has given way to a peaceable arrangement.

A further point to be noted is that, apart from the direct bearing of the act on disputes in industries connected with mines and public utilities, its machinery is, by sec. 63, made available for industrial disputes of any kind, the consent of each disputant being, however, necessary where the dispute lies outside the stated industries; in such cases the statute becomes purely a measure of conciliation, as was the original Dominion statute of 1900. This feature of the *Industrial Disputes Act* has so far been less active than had been perhaps hoped. Of the 177 disputes brought within the influence of the act during the eight years ended March 31, 1915, ten were of what may be termed the "outside" classes, and in each case an amicable settlement was effected.

It will be manifest to those who examine the record of the act that much responsibility falls on the chairman of Boards of Conciliation and Investigation, who must of necessity be frequently the decisive factor in the efforts made at adjustment. In approximately one-half the total number (158) of boards which have been established the chairman has been appointed by joint agreement; in the remaining cases the appointment of the chairman has been made by the Minister. The small proportion of disputes going to boards in which the threatened strike was not averted (19 out of 158) would suggest that the chairmen, whether appointed by joint agreement or otherwise, have as a rule possessed the tact, skill and breadth of mind necessary for the difficult work of adjusting an industrial dispute.

There are three respects in which it is possible to look forward

to a widening sphere of usefulness for the act, as the sound reason of the principles on which it is based and the simplicity of procedure associated with it come to be more completely recognized by those affected and by the public at large, viz.: (1) the disappearance of unlawful strikes and lockouts; (2) an increasing disposition on the part of those concerned in disputes brought before a board to accept the findings of the board; (3) more frequent application of the machinery of the act to the settlement of disputes in "outside" industries. If the effectiveness of the two statutes under consideration can, in these important respects, be increased, Canada would seem to have come nearest among the nations to the discovery of that legislative alchemy which the industrial world has so long sought, and the reign of industrial peace would be at hand. But it is well that any prediction should be guarded. The factors that make for and against industrial peace, as with peace in the larger world of nations, are many and varied. Human motive is seldom based on reason alone. There are those who will not be content with what an Ontario politician once described as "cold justice," not at least while there appears a chance of "better terms," whether by an adroit manoeuvre or, sometimes, by rougher methods. Moreover the ancient problems, "What is justice?" "What is truth?" remain substantially unsolved and attempts at solution bring their clashes.